

The Twenty-Seventh Amendment and Congressional Compensation Part 2: The Federal Convention

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This Legal Sidebar post is the second in a six-part series that discusses the [Twenty-Seventh Amendment to the Constitution](#), which prevents laws that modify Members of Congress’s compensation from taking effect until after an intervening congressional election. During the [117th Congress](#), the Sergeant at Arms fined three Members of the House of Representatives for entering the House Chamber without wearing masks during the COVID-19 pandemic. The Members declined to wear masks to protest a House [resolution](#) and policy requiring them to do so. Because the fines were deducted from their salaries without an intervening House election, the Members challenged the mask policy in federal court as a violation of the Twenty-Seventh Amendment. In [Massie v. Pelosi](#), a D.C. federal district court judge dismissed the Members’ complaint, determining that the mask policy was consistent with the Twenty-Seventh Amendment because the disciplinary fines did not modify the Members’ annual salaries designated in the [Ethics Reform Act of 1989](#). (In August 2022, a federal judge dismissed a [similar challenge](#) to fines, for violating rules on security screening.)

As a result of these federal district court decisions, which have been appealed to the U.S. Court of Appeals for the D.C. Circuit, Congress may be interested in the history and scope of the most recently ratified amendment to the Constitution. Additional information on this topic is published in the [Constitution Annotated: Analysis and Interpretation of the U.S. Constitution](#).

Debates in the Federal Convention

The concerns that motivated the proposal and ratification of the Twenty-Seventh Amendment grew out of debates at the Federal Convention about compensating Members of Congress. Prior to the Constitution’s drafting, many of Great Britain’s American Colonies—and, later, the states in their constitutions—[adopted](#) the British House of Common’s “ancient practice” of compensating legislators for their services. Generally, state legislators set their compensation by law, which was paid out of the state’s treasury. Similarly, under the [Articles of Confederation](#), states were responsible for compensating their delegates to the Confederation Congress. As Justice Joseph Story [noted](#) in his *Commentaries on the Constitution of the United States*, the American preference for compensating legislators had a longstanding pedigree. Its

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purposes were to ensure that a pool of talented people from all economic backgrounds would serve as legislators and to reduce the potential for corruption that might result if legislators received compensation from other sources. These historical practices [informed](#) the Framers' deliberations at the 1787 Constitutional Convention.

At the beginning of the Federal Convention in Philadelphia, Virginia Governor and Convention delegate Edmund Randolph [proposed](#) a blueprint for the national government, in a series of resolutions known as the "Virginia Plan." This plan addressed compensation for Members of the proposed bicameral national legislature. An early draft stated that Members of the Senate and House of Representatives would receive "liberal stipends, by which they may be compensated for the devotion of their time to public service."

Convention delegates debated the issue of congressional compensation on many occasions. Concerns about legislator corruption [featured prominently](#) in these discussions. During several debates, the delegates [argued](#) about whether Members of Congress's compensation should be determined by the Constitution, the Members themselves, or the state governments. An ancillary debate about Congress's power to set its pay grew out of these discussions.

One group of delegates maintained that the Constitution should "fix" salaries for Members of Congress according to an objective standard. During one June 1787 debate, James Madison argued that it would be "an indecent thing" to permit Members of Congress to "regulate their own wages." Madison [believed](#) that the Members of the national legislature would be "too much interested to ascertain their own compensation" and that they might "put their hands into the public purse for the sake of their own pockets." Instead of adopting this "dangerous" path, Madison [proposed](#) tying Members' salaries to the average price of a commodity, such as wheat.

Other delegates disagreed with Madison's view and argued that Members of Congress should determine their compensation by law. For example, Nathaniel Gorham, a delegate from Massachusetts, [contended](#) that Members of Congress should have the flexibility to adjust their salaries "from time to time," noting that state legislators had often done so without incident. Under this proposal, Members' salaries would be paid out of the national treasury and Congress could adjust its compensation to take account of future circumstances.

A third group of Convention delegates [argued](#) that each state government—rather than the Constitution or Congress—should determine compensation for its Members of Congress, which would be paid out of the state's treasury. Delegates who supported this arrangement argued that it would allow each state to adopt the amount of compensation it deemed reasonable and prevent states from unwillingly contributing a disproportionate amount of funds to Members' salaries. Proponents also [maintained](#) that, by setting Members' compensation, states could ensure that Senators, whom state legislatures would elect, would not "lose sight of their constituents" when serving in the nation's capital.

Delegates who opposed allowing each state to determine its own Members' compensation independently of the other states, such as Alexander Hamilton, [contended](#) that this arrangement would allow state legislatures to exercise too much control over Members of Congress. In this vein, opponents [noted](#) that individual states would control Members' salaries despite the fact that "the whole nation has an interest in the attendance and services of [all of] the members." Opponents also argued that frugal states might reduce salaries to such a degree that talented people would not want to serve in Congress.

On August 14, 1787, delegates to the Federal Convention [reviewed](#) a draft of the Constitution that authorized the states to set compensation for Members of Congress. Delegate Gouverneur Morris moved to modify this draft to permit Congress to set its Members' salaries to be paid out of the national treasury. Morris contended that "there could be no reason to fear that they would overpay themselves." James Madison [agreed](#) with other delegates that allowing the states to determine Members' compensation would undermine the national government's stability but continued to advocate for a fixed limit on Members' salaries in the Constitution. After some debate, the Convention delegates approved language providing for

Members to set their pay by law, which would be paid out of the U.S. treasury. The delegates rejected a proposal that would have established a fixed amount for Members' compensation.

As proposed to the states, the [Congressional Compensation Clause](#) in Article I, Section 6 provided that “[t]he Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States.” The Constitution thus provided for the national government to compensate Members of Congress for their services in amounts set by congressional legislation. Notably, the original Constitution did not prevent federal laws that increased or decreased Members' salaries from taking effect before the next congressional election. The absence of an intervening electoral check on Congress's power to set its own pay became a [source of tension](#) during debates in many of the state conventions that met to consider the Constitution's ratification.

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